VIA EFS-WEB

PATENT APPLICATION
Docket No. 16497.1.1.2.1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of	Carley et al.	)
Serial No.:	10/787,073	) Art Unit) 3731
Filed:	February 24, 2004	)
Conf No.:	9513	)
For:	CLOSURE DEVICE	)
Examiner:	Melanie Ruano Tyson	)

RESPONSE TO THE RESTRICTION REQUIREMENT

Mail Stop AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Restriction Requirement dated November 30, 2006, Applicant respectfully submits the following to be filed in the above-identified application. The Examiner has requested an election of a single invention, including an election of a single species to be examined along with the elected invention. The Examiner has identified the inventions as follows:

I. Species I as depicted in Figures 1A-1C, having tines biased to extend generally inward;

II. Species II as depicted in Figure 2, having primary tines overlapping the body.

III. Species III as depicted in Figure 3A, having primary tines offset from the axis of symmetry of the loop from which they extend.

IV. Species IV depicted in Figure 3B, having secondary tines that are spaced apart from the primary tines.

V. Species V depicted in Figure 3C, having a generally elliptical shape.

VI. Species VI depicted in Figure 4, having primary tines of different lengths.

On page 2 of the Official Action, the Examiner asserted that currently no claim is generic. Based on these assertions, the Examiner required that an election be made under 35 U.S.C. §121. In view of the above, Applicants hereby elect with traverse species I containing figures 1A-1C. Claims 1-13 and 15-18 read upon the elected species. Applicant's traversal of the restriction follows below.

From a regulatory standpoint, there are two criteria for a proper requirement for restriction between patentably distinct inventions: (A) The inventions must be independent or distinct as claimed; and (B) There would be a serious burden on the examiner if restriction is not required. M.P.E.P. 803 (I) (citations omitted). The second prong of the M.P.E.P test for restriction, which is a serious burden on the Examiner, is not met. In particular, an appropriate explanation of separate classifications, separate status in the art, or a different field of search were not included with the Official Action. It appears that there would be no difference in the classification, status in the art, or field of search for the species identified. As such, restriction is inappropriate because there would be no serious burden on the examiner if restriction was not required, as no additional work would be required in searching or examining the claims. Thus, there would be no serious burden on the Examiner in examining the claims without restriction. In view of the above, Applicants respectfully request that the restriction requirement be reconsidered and withdrawn. Notice to that effect is requested.

An action on the merits of all the claims and a Notice of Allowance thereof are respectfully requested. In view of the above, Applicants hereby elect with traverse species I containing figures 1A-1C. Claims 1-13 and 15-18 read upon the elected species. In the event that the Examiner desires clarification to or discussion of the election or requested species-figure modification that may be facilitated through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 3rd day of January, 2007.

Respectfully submitted,

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